

### **REMARKS**

Applicant has received and carefully reviewed the Advisory Action mailed on May 29, 2008 and the Final Office Action mailed on March 18, 2008, prior to preparing this paper. Currently, claims 11-21 are pending in the application, wherein claims 11-21 have been rejected. Claims 11, 16, 18 and 20 have been amended and claims 22-24 have been added with this amendment. No new matter has been added. Favorable consideration of the above amendments and following remarks is respectfully requested.

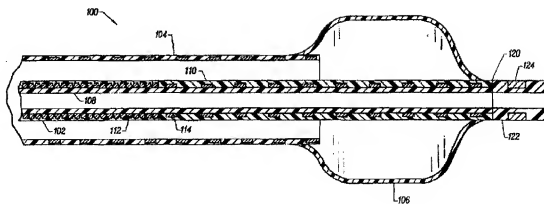
#### **Rejections Under 35 U.S.C. §103**

Claims 11-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Preissman et al. (U.S. Patent No. 5,728,063) in view of Fontirroche et al. (U.S. Patent No. 5,538,510), and Ross et al. (U.S. Patent No. 5,395,866). This rejection is respectfully traversed.

Each of claims 11 and 16, as currently amended, recites that the mediator layer is disposed between the inner layer and the outer layer such that the inner layer is not in direct contact with the outer layer. The combination of Pressman, Fontirroche and Ross fail to teach at least this limitation of claim 11.

It appears as though the teachings of Preissman et al. are being primarily relied on in formulating the rejection of claims 11 and 16 as teaching the various components of the claimed catheter, with the disclosures of Fontirroche et al. and Ross being relied on as disclosing specific material selection for the inner layer and a reinforcement layer. In formulating the rejection of claims 11 and 16, while referring to the teachings of Preissman, it appears that the claimed "first catheter tube" is being equated to the inner catheter 102; the claimed "inner layer" is being equated to the inner tubular member 108; the claimed "outer layer" is being equated to the soft outer layer 110; and the claimed "mediator layer" is being equated to the first and second reinforcement layers 112, 114 of Preissman.

FIG. 4 of Preissman, reproduced below, illustrates the arrangement of the inner tubular member 108, the soft outer layer 110, and the first and second reinforcement layers 112, 114 of Preissman.



As can be clearly seen in FIG. 4 of Preissman, the soft outer layer 110 is in direct contact with the inner tubular member 108 between adjacent windings of the reinforcement layers 112, 114 at numerous locations along the inner catheter 102. Thus, the teachings of Preissman do not seem to meet these noted claimed limitations.

In the event that the Examiner is attempting to rely on the inner layer and the outer layer of the laminate structure of the inner tubular member taught in Preissman et al. at column 7, lines 7-14 as meeting the limitations of claims 11 and 16, Applicant respectfully disagrees. Preissman et al. fail to disclose the inclusion of a mediator layer between the inner layer and the outer layer of the laminate structure adhered to both the inner layer and the outer layer. It is further noted that each of claims 11 and 16 recites that the claimed inner layer "forms the lumen" in the first catheter tube, and the claimed outer layer "forms an outer surface" of the first catheter tube. Thus, if the outer layer of the laminate structure of the inner tubular member of Preissman et al. is being equated to the claimed outer layer, it is noted that the outer layer of the laminate structure does not form an outer surface of the first catheter tube. Instead, the braided reinforcement layers 112, 114 are formed over the outer layer of the laminate structure of the inner tubular member 108, and the soft outer layer 110 is then formed over the braided reinforcement layers 112, 114. Thus, it is the soft outer layer 110 which forms an outer surface of the inner catheter 102 taught in Preissman et al.

The teachings of Fontirroche et al. and Ross fail to remedy the noted shortcomings of Preissman et al. necessary to establish a *prima facie* case of obviousness. For at least the reasons stated above, each and every limitation of claim 11 and 16 is not taught or suggested by the cited prior art. Thus, claims 11 and 16 are believed to be in condition for allowance. Claims 12-15

and 17, which depend from one of claims 11 and 16 and include additional limitations, are also believed to be in condition for allowance. Withdrawal of the rejection is respectfully requested.

Claims 18-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Preissman et al. (U.S. Patent No. 5,728,063) in view of Gold et al. (U.S. Patent No. 4,636,346). This rejection is respectfully traversed.

Each of claims 18 and 20, as currently amended, recites in part “the middle layer having an outer surface adhered to the outermost layer, and the middle layer having an inner surface adhered to the innermost layer”. In attempting to equate elements of the catheter of Preissman et al. with those recited in claims 18 and 20, it appears as though the inner tubular member 108 would be required to represent the claimed innermost layer, and the soft outer layer 110 would be required to represent the claimed outermost layer, if at all. With this understanding, Preissman et al. fail to teach a middle layer as claimed which has an outer surface adhered to the soft outer layer 110 and an inner surface adhered to the inner tubular member 108.

As discussed throughout the present application, the presence of the middle layer between the innermost layer and the outermost layer is to insure strong adhesive anchorage between the innermost layer and the outermost layer. Thus, the inner and outer layers may be chosen for their most appropriate mechanical characteristics. See Specification, at page 3, lines 20-22. The middle layer thus can be chosen to adhere to each of the innermost layer and the outermost layer, affixing the innermost layer to the outermost layer.

Regarding the teachings of Preissman et al., the reinforcement layer 112 or 114 is held in contact with the inner tubular member 108 by forming the soft outer layer 110 over the braided reinforcement layer. At no point does Preissman disclose that the reinforcement layer 112 or 114 is adhered to either the inner tubular member 108 or the soft outer layer 110. Thus, the reinforcement layer 112 or 114 does not contribute to affixing the inner tubular member 108 to the soft outer layer 110 to help prevent de-lamination of the soft outer layer 110 from the inner tubular member 108. The reinforcement layer 112 or 114 is present simply to provide greater stiffness and column strength to portions of the catheter body. See Preissman et al., at column 10, lines 44-49.

Gold, which the Examiner relies on as teaching a tube comprising an outermost layer having a high coefficient of friction and an innermost layer having a low coefficient of friction,

fails to remedy the shortcomings of Preissman et al.

For at least the reasons stated above, claims 18 and 20 are believed patentable over the cited references, as a *prima facie* case of obviousness has not been established regarding either claim 18 or claim 20. Claims 19 and 21, which depend from one of claim 18 and 20 and include additional limitations, are also believed patentable over the cited references. Withdrawal of the rejection is respectfully requested.

Newly added claims 22-24, which depend from one of claims 11, 18 and 20, are also believed allowable over the cited prior art for at least the reasons stated above. Favorable consideration of these claims is respectfully requested.

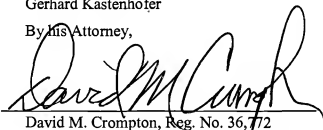
### **CONCLUSION**

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Gerhard Kastenhofer

By his Attorney,



David M. Crompton, Reg. No. 36,772  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, MN 55403-2420  
Telephone: (612) 677-9050  
Facsimile: (612) 359-9349

Date: \_\_\_\_\_

7/18/08